



S.A.No.329 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	08.10.2025
<i>Pronounced on</i>	17.10.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.329 of 2022
and C.M.P.No.6849 of 2022

- 1.Packiaraj
- 2.Sathiyaraj (Major)

[*2nd Appellant declared as major,
and mother Poongavanam discharged
from his guardianship vide Court
order dated 01.04.2022 made in
C.M.P.No.5650 of 2022 in
S.A.Sr.No.47945 of 2021 (SSSRJ)

.. Appellants

versus

- 1.Shajakhan
- 2.Kasim

.. Respondents



S.A.No.329 of 2022

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Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 26.02.2021 made in A.S.No.99 of 2006 on the file of learned Additional Sub Judge, Kallakurichi reversing the judgment and decree dated 07.10.2005 made in O.S.No.908 of 1998 on the file of Principal District Munsif, Kallakurichi.

For Appellant : Mr.S.N.Subramani

For Respondent : Mr.C.Samivel for R1

No appearance for R2

JUDGMENT

The above second appeal arise out of the judgment and decree dated 26.02.2021 made in A.S.No.99 of 2006 on the file of learned Additional Sub Judge, Kallakurichi, reversing the judgment and decree dated 07.10.2005 made in O.S.No.908 of 1998 on the file of Principal District Munsif, Kallakurichi.

2.The unsuccessful defendants have preferred the present second appeal. The respondents as plaintiffs filed the above suit for declaration of



S.A.No.329 of 2022

WEB COPY

title and for mandatory injunction to demolish the building in the suit property constructed by the defendants and for recovery of possession.

3. According to the plaintiff, the portion shown as ' E F H C ' in the plaint plan originally belong to one Abdulla Sahib. The said Abdulla Sahib sold a portion of the property excluding the suit property to the defendants on 23.10.1996, shown as second item of the suit schedule. The boundary recitals in the above sale deed would clearly establish that the defendants have purchased the property excluding the suit property shown as ' A B C D ' in the plaint plan. Thereafter, the said Abdulla Sahib on 28.08.1997 sold the said property to the plaintiffs and the father of the plaintiffs was in possession and enjoyment of the suit property, since the plaintiffs were minors at that point of time. While so, during the 1st week of February 1999 the defendants trespassed into the suit property and constructed a building, pending suit. The defendants have no right or possession over the suit property. Thereafter, on 04.12.1997 the defendants have purchased the entire



S.A.No.329 of 2022

WEB COPY

suit property from one Sahul Hamid who was minor at that point of time.

The plaintiffs also filed a suit in O.S.No.999/97 and the same was withdrawn by the plaintiffs since they were not aware of the age of Minor Sahul Hamid. Hence, the plaintiffs were constrained to file the above suit in O.S.No.908/98.

4. On the other hand, the defendants contention is that the suit property and other properties in total measuring 0.4 cents originally belongs to one minor Sahul Hamid under a sale deed dated 21.05.1984. While so, the mother of Sahul Hamid namely Balkies sold the above properties to one Abdulla Sahib, vendor of the plaintiffs and the defendants on 05.03.1987. The above sale is not valid. Hence, the said Abdulla Sahib did not acquire any right over the suit property and he was never in possession and enjoyment of the suit property. While so, under the misrepresentation made by the said Abdulla Sahib, the mother of the defendants purchased 3 $\frac{3}{4}$ cents out of the total 4 cents. Thereafter, the said Sahul Hamid after attaining



S.A.No.329 of 2022

WEB COPY

majority, issued a legal notice dated 18.11.1997 to the said Abdul Sahib and to the father of the plaintiffs namely Mohamed Ali. While so, the father of the plaintiffs Mohamed Ali purposely got a sale deed on 12.12.1997 knowing well that the said Abdulla Sahib has no right over the properties. The said sale deed is not valid in the eye of law. On 04.12.1997 the defendants got a sale deed in respect of the entire 4 cents from the actual owner Sahul Hamid and from then onwards the entire suit property is in possession and enjoyment of the defendants. The plaintiffs are not in possession and enjoyment of the properties purchased by them. The plaintiffs have produced the School certificate of Sahul Hamid to state that he was a minor at the time of executing the sale deed in favour of the defendants. The said School certificate do not belong to Sahul Hamid. The said Sahul Hamid has sold his properties to third parties after attaining majority. Further, the plaintiffs have withdrawn the suit in O.S.No.999/97 since the interim application filed by the plaintiffs was dismissed and not for the reason has stated in the plaint. The defendants have constructed the



S.A.No.329 of 2022

building immediately after purchasing the suit property. Hence, prayed for dismissal of the suit.

5.The suit was dismissed by the trial Court against which the plaintiffs preferred an appeal in A.S.No.99 of 2006. The First appellate Court reversed the judgment passed by the trial Court and decreed the suit filed by the plaintiffs. Thus, the defendants have preferred the present second appeal.

6.The following substantial question of law was framed by this Court:

Whether Muslim minor, whose property is sold by a defacto but not de-jure guardian by executing a sale deed on his behalf during his minority, need to get the sale deed cancelled by filing a civil suit on attaining majority or is the sale deed void, non-est in law, and therefore, the minor need not even repudiate it."

7.The learned counsel for the appellant submits that, the suit property originally purchased in the name of minor Sahul Hamid. While so, the mother of Sahul Hamid sold the property to Abdullah Sahib, when Sahul Hamid was a minor and therefore, the said Abdullah Sahib had no authority



S.A.No.329 of 2022

WEB COPY

to sell the suit property in favour of the plaintiffs. The defendants have purchased the entire suit property from the said Sahul Hamid after attaining majority and they are in possession and enjoyment of the suit property.

8.Heard the respective counsel for the parties and perused the records.

9.Now, it has to be seen whether the sale deed executed by a de-facto guardian namely mother of the said Sahul Hamid in favour of Abdullah Sahib is valid in the eye of law.

10.It is not in dispute that the suit property originally owned by minor Sahul Hamid by virtue of sale deed dated 21.05.1984. It is also not in dispute that the same was sold by the mother of minor Sahul Hamid to one Abdulla Sahib on 05.03.1987. Thereafter, on 23.10.1996 the defendant has purchased $3 \frac{3}{4}$ portion of the suit property from the said Abdulla Sahib , excluding the portion that was purchased by the father of the plaintiffs on 20.08.1997 for the benefit of the minors. Thereafter, the said Sahul Hamid issued a legal notice on 18.11.1997 to the said Abdulla Sahib and to the father of the plaintiffs namely Mohammed Ali under Ex.B7 questioning the



S.A.No.329 of 2022

WEB COPY

sale executed by the said Abdulla Sahib in favour of the Plaintiffs. In spite of receipt of the said notice, neither Abdulla Sahib nor Mohamed Ali father of the plaintiffs replied to the said notice. Instead the said Abdulla Sahib executed a sale deed on 12.12.1997 in favour of the defendants under Ex.A2. On 04.12.1997, the said Sahul Hamid executed a sale deed in favour of the defendants under Ex.B.3 in respect of the entire 0.4 cents.

11.Now, the first and foremost question to be decided is, whether the sale deed executed by the mother of Sahul Hamid, namely Balkies Bee as defacto guardian in favour of Abdulla Sahib under Ex.B.1 dated 05.03.1997 is valid under the eye of law.

12.Under Muslim Personal Law, interests of minor is well protected. Muslim Law distinguishes between the status of a defacto guardian and a legal / de jure guardian. Any decision with regard to the devolution of the property of a Muslim suffice would to refer to the paragraph 5 of the *Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty and others*



S.A.No.329 of 2022

WEB COPY

reported in **(1996) 7 Supreme Court cases 436**, where the Hon'ble Supreme Court held:-

5. Mulla's "principle of the Mohamman Law" [Nineteenth Edition] by Justice M. Hidayatullah, former Chief Justice of this Court and Arshad Hidayatullah, deals with legal property guardians of a muslim minor in Section 359. In the order, only father, executor appointed by the father's will, father's father and the executor appointed by the will of the father's father, are legal guardians of property. No other relation is entitled to be the guardian of the property of a minor as of right; not even the mother, brother or uncle but the father or the paternal grand-father of the minor may appoint the mother, brother of uncle or any other person as his executor or executrix of his Will in which case they become legal guardian and have all the powers of the legal guardian as defined in Sections 362 and 366 of the above Principles. The Court may also appoint any one of them as guardian of the property of the minor in which case they will have all the powers of a guardian appointed by the court, as stated in Sections 363 to 367."



S.A.No.329 of 2022

WEB COPY

13. In the light of the law settled both the First Appellate Court and trial Court were wrong in holding that the sale deed executed by the mother of minor Sahul Hamid in favour of Abdullah Sahib is valid. It has long been settled by a Full Bench of this Court in *Mushamat Anto* (supra), that any transfer of property by a de facto guardian of a Muslim minor is void and non-est, it cannot be ratified by the minor upon his attainment of majority. Even when the transaction has been ratified by the minor after he has attained majority, it can subsequently be noted in *Mushamat Anto* (Supra) as follows:-

"Two questions have been referred to this Full Bench by the Bench before which the case came up for disposal. They are as follows:

(1) Can a transaction amounting to an alienation of an immovable property belonging to a Muhammadan minor by the de facto guardian of the minor be ratified by the latter upon his attainment of majority?

.....

Dealing with the third proposition, their Lordships



S.A.No.329 of 2022

WEB COPY

examined the text of the Hedayah and the Fatwa-i-Alamgiri and came to the conclusion that the Hanafi doctrine relating to a sale by an unauthorised person remaining dependent on the sanction of the owners refers to a case where such owner is sui juris possessed of the capacity to give the necessary sanction to make the transaction operative, and that they did not find any reference in these doctrines relating to fazuli sales, so far as they appear in the Hedayah or the Fatwa-i-Alamgiri, to dealings with the property of minors by persons who happen to have charge of the infants and their property, in other words, the de facto guardians. In their Lordships' opinion the doctrine about fazuli sales appears clearly to be based on the analogy of an agent who acts in a particular matter without authority, but whose act is subsequently adopted or ratified by the principal which has the effect of validating it from its inception. The idea of agency in relation to an infant is as foreign, their Lordships conceived, to Mahomedan law as to every other system.

Our answer to the first question referred to us is in the negative, as the transaction being void there is no question of ratification. The answer to the second question is that there



S.A.No.329 of 2022

WEB COPY

can be no valid ratification and therefore there can be no estoppel on account of any such ratification."

14.In the light of the law settled by the Full Bench of the Hon'ble Supreme Court, a Muslim minor even after attaining majority cannot ratify such a void sale deed. Therefore, the sale deed executed by Abdul Sahib in favour of the plaintiff on 20.08.1997 and the sale deed dated 23.10.1996 is void, non-est in law, since the sale deeds were executed by the mother, who was only a de-facto guardian on behalf of minor Sahul Hamid. Hence, the minor after attaining majority, neither get the sale deeds cancelled by filing a civil suit, nor even repudiate the same as observed by the Hon'ble Apex Court in the judgments referred supra.

15.Both the trial Court and the First Appellate Court have given specific finding of fact that the defendants are in possession of the property in dispute. Though the contention of the plaintiffs is that, the defendants have trespassed into the suit property during 1st week of February 1999 after filing of the suit, the same is not established. The plaintiffs have not



S.A.No.329 of 2022

WEB COPY

produced any documents to show that they are in possession and enjoyment of the property purchased by them. Even the possession of the plaintiffs' father was not established. On the other hand, the defendants have produced Ex.B.8 tax receipt for the period from 1995 to 1999, which amply proves that the house was constructed in the suit property even prior to Ex.B.3 sale deed.

16. On the side of the plaintiffs, it was contended that even at the time of execution of Ex.B3 sale deed in favour of the plaintiffs, the said Sahul Hamid was a minor and to establish the same they have produced the School certificate marked as Ex.A.3 and therefore, the Ex.B3 sale deed is a void document and the defendants cannot claim any right over the suit property. On the side of the defendants, the said Sahul Hamid was examined as D.W.3 and he has deposed that Ex.A3 School Certificate do not belong to him and that he had attained majority at the time of executing Ex.B3 sale deed in favour of the defendants. But, he has not produced any document to show that he was major at the time of executing Ex.B.3 sale deed. Even assuming



S.A.No.329 of 2022

WEB COPY

that the said Sahul Hamid was a minor at the time of execution of Ex.B.3 sale deed, such a sale is generally voidable at the minor's option, not automatically void. He may either file a law suit to declare the sale invalid or ratify the same within the prescribed time limit. Therefore, the plaintiffs cannot question the validity of Ex.B3 sale deed in favour of the defendants executed by Sahul Hamid. It is for the plaintiffs to establish their case as to whether they have any right over the property purchased by them and also to establish their possession in the suit property which the plaintiffs failed to do so. Hence, the substantial question of law is answered in favour of the appellant. The First Appellate Court without considering the above facts, erroneously reversed the judgment of the trial Court which is liable to be set aside.

17.In the result,

(i) The Second appeal is allowed. No costs.

(ii) The judgment and decree 26.02.2021 made in A.S.No.99 of 2006



S.A.No.329 of 2022

WEB COPY

on the file of learned Additional Sub Judge, Kallakurichi, reversing the judgment and decree dated 07.10.2005 made in O.S.No.908 of 1998 on the file of learned Principal District Munsif, Kallakurichi is set aside. consequently, connected miscellaneous petition is closed.

.10.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Additional Sub Judge, Kallakurichi
2. The Principal District Munsif, Kallakurichi
- 3.The Section Officer, VR Section, High Court, Madras.

K.GOVINDARAJAN THILAKAVADI,J.

vsn



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S.A.No.329 of 2022

**Pre- delivery judgment made in
Second Appeal No.329 of 2022
and C.M.P.No.6849 of 2022**

17.10.2025